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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KIRSTIN BLAISE LOBATO,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, THOMAS THOWSEN,
and JAMES LaROCHELLE,

Defendants.

Case No. 2:19-cv-01273-RFB-EJY

**STIPULATION AND ORDER
REGARDING NON-PARTY CRIMINAL
HISTORY REPORTS**

Plaintiff Kirstin Blaise Lobato ("Plaintiff"), by and through her counsel of record, Loevy & Loevy and Defendants Las Vegas Metropolitan Police Department, Thomas Thowsen, and James LaRochelle (collectively "Defendants"), by and through their counsel of record, Marquis Aurbach Coffing, hereby stipulate to allow the Defendants to produce the criminal histories of non-parties pursuant to the parties' Protective Order. (ECF No. 30)

I. RECITALS

Factual Background

1. Plaintiff alleges she was wrongfully convicted for the 2001 murder of Duran Bailey ("Bailey").

2. According to Plaintiff's Complaint, she did not kill Bailey and spent over 16 years incarcerated prior to being released from prison.

1 3. Plaintiff alleges that two LVMPD homicide detectives, defendants Thowsen
2 and LaRoche, violated her constitutional law rights and Nevada state law rights by
3 arresting her and pursuing her as a suspect in the murder despite knowing that Plaintiff was
4 actually innocent.

5 4. The LVMPD Defendants deny all of plaintiff's allegations.

6 ***Relevant Procedural History***

7 5. Plaintiff filed her Complaint on July 23, 2019.

8 6. On September 11, 2019 the parties participated in a Rule 26(f) conference.

9 7. The parties' Amended Discovery Plan and Scheduling Order was entered by
10 the Court on October 29, 2019. (ECF No. 39)

11 8. The parties' Protective Order regarding confidential documents was signed
12 by the Court on September 25, 2019. (ECF No. 30)

13 9. Plaintiff served her initial Rule 26 disclosures on October 4, 2019.

14 10. Defendants served their initial Rule 26 disclosures on October 15, 2019.

15 11. This Stipulation and Order involves certain documents contained in
16 Defendants' initial Rule 26 disclosures.

17 ***The Non-Party Criminal Histories at issue***

18 12. Defendants initial Rule 26 disclosures identify all documents located in the
19 LVMPD homicide file regarding Bailey.

20 13. LVMPD counsel reviewed each document and produced all documents that
21 did not require a "CONFIDENTIAL" or "privileged" designation.

22 14. Certain documents such as official police reports of non-parties, documents
23 with personal information (i.e., phone numbers, addresses), and other sensitive documents
24 were marked "CONFIDENTIAL" and produced pursuant to the parties Protective Order.

25 15. The LVMPD homicide file contained background checks of non-parties that
26 included the non-parties' personal information including arrest and criminal convictions.
27 The background checks are commonly referred to as "SCOPE" printouts.

1 16. Some non-party fingerprint sheets were also included.

2 17. The SCOPE reports and other criminal background information were
3 obtained as a result of the LVMPD detectives' investigation. When the detectives identified
4 and/or interviewed a potential witness, they would run a background check on the individual
5 and then include the SCOPE printout in the homicide file. The SCOPE profiles in the files
6 ranged in years from 2001 through 2005.

7 18. NRS 179A.100 prohibits LVMPD from disseminating the SCOPE printouts
8 of non-parties except for in limited circumstances. *See* NRS 179A.100.

9 19. Due to NRS 179A.100 prohibitions, Defendants marked the documents
10 privileged and provided Plaintiff with a privilege log. (*See Exhibit 1.*)

11 20. After receiving Defendants' privilege log, the parties held a meet and confer
12 on the issue.

13 21. It was Plaintiff's position that the SCOPE printouts are relevant for discovery
14 purposes as they may be relevant to a witness's credibility or may be used for impeachment
15 purposes.

16 22. Defendants did not disagree with Plaintiff, but countered that NRS 179A.100
17 prohibited Defendants from disseminating the criminal histories of non-parties as none of
18 the statute's exceptions were met.

19 23. The parties agreed that if the Court ordered the SCOPE and other criminal
20 history documents produced pursuant to the parties' strict Protective Order, all parties would
21 be adequately protected and the criminal history documents would be protected from
22 dissemination beyond the parties and their agents.

23 24. Based upon the above, this Stipulation and Order is brought in good faith to
24 work out a discovery dispute without this Court's intervention.

25 25. The parties certify that this Stipulation and Order is not for purposes of delay.
26
27

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ORDER

UPON STIPULATION OF THE PARTIES and for good cause shown, THE FOLLOWING IS HEREBY ORDERED:

1. The SCOPE printouts and other criminal history documents of non-parties found located in the Duran Bailey Homicide File that are identified in LVMPD's Privilege Log (Ex. 1) can be produced by Defendants to Plaintiff in this litigation.

2. The SCOPE printouts and other criminal history documents of non-parties identified on Exhibit 1 will be produced pursuant to the parties' executed Protective Order. (See ECF No. 30)

3. That SCOPE printouts and other criminal history documents of non-parties referenced in Exhibit 1 will be treated with the utmost confidentiality and will not be disseminated for any reason to any individual beyond the parties, their counsel, and agents.

IT IS SO STIPULATED this 4th day of December, 2019.

MARQUIS AURBACH COFFING

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Kirstin Blaise Lobato*

Lobato v. LVMPD, et al.

Case No. 2:19-cv-01273-RFB-EJY

ORDER

IT IS SO ORDERED this ____ day of December 2019.

UNITED STATES DISTRICT JUDGE

MARQUIS AURBACH COFFING

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Exhibit 1 – Privilege Log

LVMPD Privilege Log
 Exhibit LVMPD, et al., Case No.: 2:19-cv-01273

LVMPD PRIVILEGE LOG

Privilege Designations:

- A. Confidential Medical/Personal/Private/Personnel File Information
- B. Attorney/Client Privilege
- C. Work Product Privilege
- D. Criminal History Information pursuant to NRS 179A, et seq.
- E. Peer-Review
- F. Not calculated to lead to the discovery of admissible evidence
- G. Settlement privilege
- H. Joint defense and/or common interest privilege
- I. Law Enforcement Investigative Informations
- J. Law Enforcement Techniques/Tactics
- K. Evidence
- L. Executive Privilege
- M. Confidential Informant
- N. Protective Order
- O. Order of the Court
- P. Other Agency Records

No.	Bates Nos.	Document Description	Outcome	Privilege Designation
1.	LVMPD 000105	Criminal history concerning victim	Withheld from Production	D
2.	LVMPD 000259-000260	Documents regarding Call Records from Central Telephone Company of Nevada d/b/a Sprint	Marked Confidential	A, N
3.	LVMPD 000266-000268	Documents regarding Call Records from AT&T Wireless, and Central Telephone Company of Nevada d/b/a Sprint	Marked Confidential	A, N

LVMPD Privilege Log
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4.	LVMPD 000277-000284	Documents concerning assault of Diann Parker	Marked Confidential	A, N
5.	LVMPD 000733	Personal information of non-related party	Withheld from Production	A, N
6.	LVMPD 000768-000780	Criminal history concerning victim	Withheld from Production	D
7.	LVMPD 000812-000847	Lobato juvenile records	Marked Confidential	N
8.	LVMPD 000848-000857	Criminal history of non-related party	Withheld from Production	A, D
9.	LVMPD 000973-000980	Personal information of non-related party	Withheld from Production	A, N
10.	LVMPD 000981-000992	Criminal history of non-related party	Withheld from Production	A, D
11.	LVMPD 000993	Personal information of non-related party	Withheld from Production	A, N
12.	LVMPD 000994-001001	Documents regarding Call Records from Verizon	Marked Confidential	A, N
13.	LVMPD 001002-001006	Criminal history of non-related party	Withheld from Production	A, D
14.	LVMPD 0001007-001009	Criminal history of non-related party	Withheld from Production	A,D
15.	LVMPD 001010-001017	Criminal history of non-related party	Withheld from Production	A, D
16.	LVMPD 001018-001029	Criminal history of non-related party	Withheld from Production	A, D
17.	LVMPD 001030-001033	Criminal history of non-related party	Withheld from Production	A, D
18.	LVMPD 001034-001035	Documents regarding Call Records from Central Telephone Company of Nevada d/b/a Sprint	Marked Confidential	A, N
19.	LVMPD 001036-001038	Personal information of non-related parties	Withheld from Production	A, N
20.	LVMPD 001043	Criminal history of non-related party	Withheld from Production	A, D
21.	LVMPD 001044	Criminal history of non-related party	Withheld from	A, D

LVMPD Privilege Log
 Exhibit A, LVMPD, et al., Case No. 2:19-cv-01273

			Production	
22.	LVMPD 001045-001048	Documents regarding Call Records from Central Telephone Company of Nevada d/b/a Sprint	Marked Confidential	A, N
23.	LVMPD 001051-001053	Personal information of non-related parties	Withheld from Production	A, N
24.	LVMPD 001058	Criminal history of non-related party	Withheld from Production	A, D
25.	LVMPD 001059-001065	Criminal history of non-related parties	Withheld from Production	A, D
26.	LVMPD 001066-001077	Documents regarding Call Records from Central Telephone Company of Nevada d/b/a Sprint	Marked Confidential	A, N
27.	LVMPD 001078-001100	Criminal history of non-related parties	Withheld from Production	A, D
28.	LVMPD 001101-001104	Personal information of non-related parties	Withheld from Production	A, N
29.	LVMPD 001105-001106	Criminal history of non-related party	Withheld from Production	A, D
30.	LVMPD 001107-001108	Personal information of non-related parties	Withheld from Production	A, N
31.	LVMPD 001109-001114	Criminal history and personal information of non-related parties	Withheld from Production	A, D
32.	LVMPD 001116-001120	Criminal history of non-related parties	Withheld from Production	A, D
33.	LVMPD 001121	Personal information of non-related party	Withheld from Production	A, N
34.	LVMPD 001122-001139	Criminal history of non-related party	Withheld from Production	A, D
35.	LVMPD 001140-001153	Documents regarding Call Records from Central Telephone Company of Nevada d/b/a Sprint	Marked Confidential	A, N
36.	LVMPD 001154-001162	Criminal history of non-related parties	Withheld from Production	A, D

LVMPD Privilege Log
 Exemption LVMPD, et al., Case No. 2:19-cv-01273

37.	LVMPD 001167	Personal information of non-related party	Withheld from Production	A
38.	LVMPD 001168-001169	Criminal history of non-related party	Withheld from Production	A, D
39.	LVMPD 001210-001214	Documents concerning assault of Diann Parker	Marked Confidential	A, N
40.	LVMPD 001215-001218	Criminal history of non-related party	Withheld from Production	A, D
41.	LVMPD 001219-001264	Documents concerning assault of Diann Parker	Marked Confidential	A, N
42.	LVMPD 001859-001890	Criminal history of non-related parties	Withheld from Production	A, D
43.	LVMPD 001891-001907	Documents regarding Call Records from Cingular Wireless	Marked Confidential	A, N
44.	LVMPD 001908-001920	Criminal history of non-related parties	Withheld from Production	A, D
45.	LVMPD 002679-002685	Criminal history of non-related parties	Withheld from Production	A, D
46.	LVMPD 002686-002936	Inmate Records regarding Kirstin Lobato	Marked Confidential	N
47.	LVMPD 002937-003027	NaphCare Records regarding Kirstin Lobato	Marked Confidential	N